United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

76-1420

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- X

UNITED STATES OF AMERICA, :

Appellee, :

v. :

KENNETH RAYMOND CHIN, and ELIZABETH JANE YOUNG, now known as ELIZABETH JANE YOUNG CHIN, :

Defendants-Appellants. :

- X

B P/S

On appeal from the United States District Court for the Eastern District of New York

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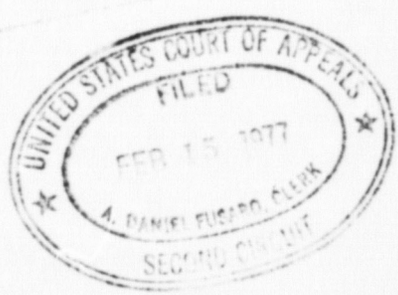
REPLY BRIEF FOR APPELLANT ELIZABETH JANE YOUNG CHIN



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REPLY BRIEF FOR APPELLANT ELIZABETH JANE YOUNG CHIN

POINT I

THE GOVERNMENT HAS FAILED TO MEET APPELLANT'S ARGUMENTS ON THE FAILURE OF THE SEARCH WARRANT TO MEET CONSTITUTIONAL MUSTER.

Appellant has argued that the affidavit in support of the search warrant was inadequate under standards required to be met by the Fourth Amendment (App. Br., Pt. I, pp. 14-25). Appellee has advanced the discredited argument that the exclusionary rule does not operate if law enforcement agents have in good faith gone to a magistrate and secured the issuance of a warrant. This proposition was rejected by this Court in

United States v. Karanthanos, 531 F.2d 26, 32, (2 Cir., 1976). Moreover, appellee has argued (Appee. Br., footnote p. 19) that this position is supported in the recent Supreme Court case of Stone v. Powell, ___ U.S. ___ 44 U.S.L.W. 5313 (July 6, 1976) 49 L. Ed. 1067. In truth, the majority ruling of the Court there reaffirmed the doctrine declared in Weeks v. United States, 232 U.S. 383 (1914), which barred the introduction in evidence in federal prosecutions of property secured through an illegal search or seizure. The rifles seized in the instant case and introduced into evidence were illegally and erroneously admitted into evidence under standards set by a long line of cases interpreting the directions of the Fourth Amendment by this Court and other federal courts.

Appellant made three arguments as to the insufficiency of the affidavits:

A) The facts alleged concerning rifles were old (stale) and did not concern the location of any weapon in New York where the search was conducted since the weapon was described as purchased in California 66 days before the warrant issued to search appellants' Brooklyn apartment;

B) The facts alleged did not describe or support the crime alleged -- or any crime;

C) The allegations in a second (secret) affidavit by the government agents deliberately or

recklessly misrepresented the facts and thereby invalidated the warrant.

Appellee has failed to meet appellant's argument on any of the above grounds, preferring to urge this Court to uphold the search merely because a magistrate issued the warrant.

A. The facts alleged were stale

Preliminarily, appellee has cited 3 Wright, Federal Practice and Procedure, §662, p. 23 (Appee. Br., p. 19) which in fact supports appellant's argument, viz.:

> "Probable cause must exist at the time it is sought to make the search. It is not enough that at some time in the past there existed circumstances that would have justified a search in the absence of reason to believe that those circumstances still exist. [citing Schoeneman v. United States, 317 F.2d 173 (C.A.D.C., 1963); United States v. Sawyer, 213 F. Supp. 38 (D.C., Pa., 1963) (Pocket Part); United States v. Neal, 500 F.2d 305, 309 (10 Cir., 1974)]."

In United States v. Dauphinée, 538 F.2d 1, 5 (1 Cir., 1976), language of the Court further supports appellant, viz.:

> "Factors like the nature of the criminal activity under investigation and the nature of what is being sought have a bearing on where the line between stale and fresh information should be drawn in a particular case [citing United States v. Steeves, 525 F.2d 33 (8th Cir., 1976) and United States v. Johnson, 461 F.2d 285 (10 Cir., 1972)]."

As distinguished from the case at bar, Dauphinée involved hand grenades actually observed in defendant's home and the allegation

the defendant was a felon which, together, spelled out all the elements of a violation of 18 U.S.C. App. §1202(a)(1). In Steeves the same §1202(a)(1) was the law involved. The time lapse there between the events alleged (a bank robbery) and the execution of the warrant was 87 days. There counsel for defendant argued staleness, but did not prevail because of "the nature of the criminal activity involved" -- a bank robbery, which is a serious crime. It was fair, said the Court, to assume that items such as the ski mask and pistol used in the robbery were in the defendant's home which was in the same city as the bank that was robbed.

B. There was no allegation, in the affidavit, of criminal activity

In the case at bar, the magistrate, with no further information, had to assume that the rifle involved was transported 3,000 miles from the place where it was observed. Moreover, the magistrate had to assume this fact in the absence of any allegation of fact showing that any crime (such as a bank robbery in Steeves) had taken place.

Appellee appears inexplicably to agree with appellant in at least a part of this argument, stating:

> "This holding in the Steeves case is particularly apposite here because there was no evidence to suggest that the AR-180, semi-automatic rifle involved [in the case at bar] was used in the commission of a crime . . ." (emphasis supplied) (Appee. Br., p. 21).

This is precisely appellant's argument -- there was no allegation

that a crime was committed in the four corners of any of the affidavits submitted in support of the search warrant; the affidavit was, accordingly, insufficient.

United States v. Rosenbarger, 536 F.2d 715 (6 Cir., 1976) (time lapse 21 days) and United States v. Kirk, 534 F.2d 1262 (8 Cir., 1976) (time lapse also 21 days) add little to appellee's argument.

In United States v. Rahn, 511 F.2d 290 (10 Cir., 1975), the time lapse was considerable (2 years) between observation of illegal activity and the issuance of the warrant. There, however, were special circumstances and the crime of conversion of government property (use of a weapon which was supposed to have been legally destroyed) was clearly delineated and again, as it appears from the record, all the events took place at or near Denver, Colorado -- not separated by 3,000 miles.

Appellee analogizes Rahn with the case at bar, stating that the affidavit asserted that appellant Young had misrepresented her address when she purchased the AR 180 in California (Appee. Br., p. 22). A careful review of the affidavits reveals no allegation that Ms. Young misrepresented any material fact -- only that

> "at the time of the purchase described in paragraph 1 above, Copeland advised that Elizabeth Jane Young identified herself by means of a California driver's license IV 3489891, which reflected her address to be 1555 6th Avenue, Los Angeles, California."

There is a subsequent allegation that Ms. Young "presently"

(on October 3, 1976) resides in Brooklyn, but no allegation that she made any false or deliberate misrepresentation on July 29, 1976 in Inglewood, California when she purchased the AR 180 rifle (A-13).

In United States v. Samson, 533 F.2d 721, 723 (1 Cir., 1976), cited by appellee, the allegation in the search warrant reflected a reliable informant saying that he saw the certain firearms which were contraband because of defendant's prior felony conviction and that "as far as he knows [defendant] took the guns to his apartment" -- still in the same city in the environs of Portland, State of Maine. Nonetheless, in affirming his conviction, the Court of Appeals found that because of the vagueness in the affidavit as to the whereabouts of the firearms "[t]he question is perhaps close." Appellee's reliance on United States v. Lucarz, 430 F.2d 1051 (9 Cir., 1970) is also misplaced since in that case, as in all others cited, the fact that a serious crime had taken place is clearly spelled out in the affidavit -- a distinction which is crucial between all the other cases and the case at bar. The only crime alleged in the public affidavit to have been committed by Ms. Young was violation of 922(a)(6) -- which proscribes the making of a false statement or misrepresentation of a material fact in the purchase of a firearm.

There is no such allegation by Findlay in his affidavit. The crime defendants were later charged with -- transportation of

a firearm from without the state into the state where the person transporting the weapon resides (18 U.S.C. §922(a)(3)) -- was the charge on which she and her husband stood trial and are now convicted. Under the law enunciated by the Fifth Circuit in a case directly in point, United States v. Mendoza, 487 F.2d 309, 311 (1973), there could be no crime alleged under §922(a)(6) without an allegation that Ms. Young produced her California driver's license for purposes other than identification to show residence. The only assertion in the affidavit was that Ms. Young identified herself as Elizabeth Jane Young "by means of a California driver's license . . . which reflected her address . . ." Appellee would mislead this Court when it states:

> "The issue here . . . is whether there was probable cause to believe that when Young purchased the AR 180 semi-automatic rifle she knowingly gave a false address." (Appee. Br., p. 25)

There was no such factual assertion in the papers before the magistrate.

C. Whether or not the first affidavit was sufficient cannot be considered independently of the severely prejudicial effect of the second affidavit now conceded to be false, since they were both considered by the magistrate prior to the issuance of the warrant.

There is no dispute that two affidavits were before the magistrate on October 3, 1976; the public affidavit -- the contents of which have been discussed above -- and a secret

affidavit, only part of which was ever revealed to counsel for defendant (A-12-18). Thus, it is difficult to follow appellee's argument, adopted by the court below, that the apparent sufficiency of the public affidavit somehow makes unimportant the false representations made by the government agent in the second secret affidavit. The record plainly shows that the magistrate considered the allegations in both the public and the secret affidavit before issuing the warrant.

Findlay swore under oath that grounds for issuing the warrant were as follows:

> "1. Investigation by Special Agents of the United States Secret Service . . . revealed that during the year 1973 Elizabeth Jane Young resided at 4303 Arlington Avenue, Los Angeles, California with one Joanne Miyamoto. This information was derived by an examination of the records of the United States Postal Service and by an independent investigation of the Federal Bureau of Investigation." (emphasis supplied) (A-15-16).

The "information" stated in the underlined portion of the above affidavit was later admitted by the government to be false (GSA 4, 5).[1] No explanation is given as to how or why the false allegation was made; it is now conceded that Ms. Young and Ms. Miyamoto did not live together in 1973. By these false statements the government attempted to link defendant Young to a plot to harm the Emperor of Japan. That dire charge was hung on the slim thread that in 1973, two years before, she had lived

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1. Reference to the government's supplemental appendix will be made by "GSA" and page number.

with a person with a Japanese name who belonged to certain "extremist groups." The alleged fact of her living with Ms. Miyamoto was false. Had the federal agents checked the postal records, as they said they did, they would have known that the allegation was false. This is a serious and deplorable misrepresentation on the part of the government and is not "an honest mistake" as appellee would have this Court believe.

In the absence of the so-called "honest mistake" that connected appellant Young to Ms. Miyamoto there was no connection whatsoever to be made between Ms. Young and the "alleged threat against Emperor Hirohito." The charge is serious and inflammatory and was based entirely on fiction. Considering the enormity of the accusation -- a threat to the life of the Emperor of Japan -- any magistrate would issue the warrant in the belief that no federal agent would misrepresent facts to him in a sworn affidavit. Thus, the argument that this Court need not consider the second secret affidavit falls. This Court must consider both affidavits in considering the sufficiency of the showing.[2]

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2. Appellant continues to urge the right of defendant to know the entire contents of the secret affidavit, part of which is still secret to her and her counsel (A-16). The transparency of the fictions disclosed casts a lugubrious light on the government's claim that considerations of national security prevent disclosure of the rest of the affidavit to appellant.

POINT II

THE GOVERNMENT HAS FAILED TO CONTROVERT APPELLANT YOUNG'S DOUBLE JEOPARDY ARGUMENTS.

Appellee studiously avoids the proposition advanced by appellant that the criminal charge Ms. Young was required to meet on the superseding indictment was the same, or substantially the same, charge as the one on which she had been acquitted at the first trial.

As distinguished from cases cited by appellee (United States v. McGowan, 385 F.Supp. 956 (D.C.N.J., 1974); Forsberg v. United States, 351 F.2d 242 (9 Cir., 1965), appellant's previous trial on a conspiracy count and a substantive count involved only one provision of the law (18 U.S.C. 922(a)(3)) and as to the conspiracy and the substantive count, the charges in essence were identical. The truth of this proposition was further demonstrated in the trial on the superseding indictment when the government relied on the same evidence as it had adduced at the first trial and the jury acquitted Ms. Young on the conspiracy count.[3]

Contrary to the apparent contention of appellee, appellant

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3. Although the government adduced the same evidence at Ms. Young's second trial, Ms. Young was barred from adducing crucial evidence on the issue of her residence -- that she had traveled to California on a one-way ticket, had registered for unemployment insurance and had told her father she had broken up with co-defendant Chin, the person with whom she had made her residence in New York. See Ap. Br. Pt. III, p. 36.

has no quarrel with the proposition advanced by appellee (Appee. Br., p. 28) that a retrial is permitted in most instances following the declaration of a mistrial due to the inability of a jury to agree on a verdict. The exception to this rule concerns an indictment divided in two counts which alleges substantially the same violation of law and where a jury acquits on one count and fails to agree on the other.

Appellee places great reliance on United States v. McGowan, 385 F. Supp. 956 (D.C.N.J., 1974). There defendant was charged with conspiracy to violate two different sections of the narcotics law: 1) importation (21 U.S.C. §§952(a), 960), and 2) distribution (21 U.S.C. §§ 841(a)(1), 846). The court held that an acquittal on count 2 was not dispositive of count 1. It is clear that the charge of conspiracy to import narcotics is different from the charge of conspiracy to distribute narcotics and different evidence presumably would be introduced to show violations of different sections of the law.[4]

Count 1 of the superseding indictment charged defendant Young with "knowingly" and, in effect, acting jointly with co-defendant Chin as residents of New York in illegally trans-

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4. McGowan might well not be followed in this Circuit which might hold the government to the doctrine that all of the facts tended to prove one rather than two conspiracies. See United States v. Agueci, 310 F.2d 817 (2 Cir., 1962); cf. United States v. Adcock, 487 F.2d 637 (6 Cir., 1973).

porting a weapon from California to New York. This is the nub of the offense of which she was acquitted when she was charged with conspiracy with co-defendant Chin to do the same thing.

Appellee's rejection of the merit of appellant's argument on the issues of double jeopardy and collateral estoppel is difficult to follow. Appellee conceded that in the acquittal of Ms. Young on conspiracy ". . . the jury simply may not have found proof beyond a reasonable doubt, of an agreement." (Appee. Br., footnote p. 32). If indeed there was such a finding, as appellant contends, a new charge that Young and Chin acted together in concert, or aided and abetted one another to achieve an illegal purpose would be similarly barred by having already been litigated. Said the Supreme Court in Sealfon v. United States, 332 U.S. 575, 580 (1948):

> "Viewed in this setting, the verdict is a determination that petitioner who concededly wrote and sent the letter, did not do so pursuant to an agreement to defraud.
>
> "So interpreted, the earlier verdict precludes a later conviction of the substantive offense. The basic facts in each trial were identical."

Had such fatal defect been faced in the drawing of the second indictment, the government -- faced with Ms. Young's acquittal on the conspiracy count and the jury's disagreement on the substantive count -- might have been able to frame a new count charging Ms. Young alone (and not with Chin) with a violation of 18 U.S.C. §922(a)(3). Appellant

would contend, as to such hypothetical new count against Ms. Young alone, that considerations of collateral estoppel would bar certain evidence, i.e. of her quarrel with Chin and of her change of residence. Arguendo, however, such new count might have been appropriate. The government nevertheless chose not to abandon its theory of the joint culpability of the two defendants; it is, therefore, barred from proceeding against Ms. Young on the basis of the same evidence on which a jury found her not guilty.

Appellee further argues that the right to retry her is supported by the "unchallenged" statement of Judge Mishler in his decision below:

> "Proof that defendant was a resident of the state of New York at the time of the importation is an essential element of the substantive offense; for the conspiracy counts, the government's burden of proof of residency was to prove that the conspiracy contemplated that one of the conspirators be a resident of the State of New York at the time of importation." (A-56) (Appee. Br., p. 32)

Following the logic above, it would seem that Ms. Young's acquittal, then, was proof that neither she nor Chin was a resident of the State of New York at the time of importation. It is difficult to see what comfort appellee derives from such language.

POINT III

THE GOVERNMENT HAS FAILED TO CONSIDER OR ADDRESS APPELLANT YOUNG'S ARGUMENTS REGARDING COLLATERAL ESTOPPEL.

Appellant on pp. 30 and 31 of her brief urged the complementary doctrine to double jeopardy -- that of collateral estoppel -- on the individual factual issues raised at the second trial. The government has failed to meet this issue in any way.

Evidence was adduced at that first trial from the testimony of Charles Young, father of Ms. Young, that she had returned to California on a one-way ticket intending to start a new life in California after a quarrel with defendant Chin with whom she had been living in New York (Trial I, 340). She applied for unemployment insurance and looked for work in California (Trial I, 340, 341). She presented at that first trial further evidence that defendant Chin remained in New York (Trial I, 325). It was not until about the time she returned to New York in August, 1975, that she changed her mind about her residence and decided to move back to New York (Trial I, 342).

She also presented evidence to the jury that she had a legitimate interest in weapons as a hunter and that she shared that interest with co-defendant Chin, who was, at the time of trial, her husband.

When the jury found her not guilty of conspiring to violate 18 U.S.C. §922(a)(3) with the co-defendant Chin, based

on the evidence described above, it gave credence to testimony concerning her quarrel with Chin and the father's testimony concerning the circumstances of her return to California to resume residence. Having given credence to that testimony on the conspiracy charge, the jury must have agreed that Ms. Young and defendant Chin had a quarrel and that the father's testimony concerning his daughter's change of residence to California was true.

The issue that the jury may have disagreed about in that first trial, however, may have been her change of mind about her abandonment of New York as a place to live (her return to New York) and its consequences for the vexed question of her "residence" (see Point VI, infra).

The government did not discuss the contention advanced by appellant Young that collateral estoppel obtained on all the issues necessarily decided by the jury acquittal.

POINT IV

THE GOVERNMENT HAS MISSTATED THE EVIDENCE ADDUCED AT THE FIRST TRIAL AND HAS FAILED TO ANSWER APPELLANT YOUNG'S ARGUMENTS REGARDING ADMISSIBILITY OF EVIDENCE CLEARLY RELEVANT ON THE ISSUES.

The government further did not choose to comment on the issue ancillary to that of collateral estoppel -- that the trial court erred the second time around, not only on the collateral estoppel issue, but in preventing Ms. Young from

showing the facts she brought out at the first trial concerning her change of residence from New York to California (Appellant's Br., Point III, pp. 37-40). In fact, the government distorted the record in its recitation of the facts adduced at the first trial, and ignored the point raised by appellant Young completely. Its brief pointedly omits reference to the father's testimony at the first trial concerning a quarrel between Ms. Young and Mr. Chin and instead refers to his testimony as

> "He testified that she had stayed with them [her parents] briefly and had stated she wanted to work in California but went to Los Angeles shortly after arriving . . ."
> (Appee. Br., pp. 8, 9)

The government further did not discuss or respond in any way to the appellant Young's contention that she had a right to adduce all the facts bearing on her state of mind at the time she came from New York to California. If she had been able to do so and to develop what she said to her father instead of requiring counsel to ask questions in conclusory form only, that second jury might well have found as the first apparently did -- that in July, 1975 she changed her "residence" from New York to California.

POINT V

THE GOVERNMENT HAS FAILED TO MEET APPELLANT YOUNG'S ARGUMENTS CONCERNING CONGRESSIONAL PURPOSE AS IT PERTAINS TO THE RELEVANCY OF EVIDENCE AND THE DEPRIVATION OF DUE PROCESS TO APPELLANT YOUNG BY THE CONDUCT OF THE JUDGE AND HIS THREAT TO HOLD HER COUNSEL IN CONTEMPT DURING SUMMATION.

Appellee glibly refers to appellant Young's argument concerning congressional purpose as "frivolous" (Appee. Br., p. 34). In so characterizing appellant's argument, the government failed to note that the court below had instructed the jury concerning congressional purpose, viz.:

> "The Congress decides what the criminal law is, what activity constitutes criminal activity, what criminal activity constitutes a crime, and so the Congress in 1968 passed the Federal Gun Control Act, and parts of that Act are intended through congressional action to closely supervise the manufacture, sale and transportation of certain weapons." (A97 [Mishler charge])

Appellant Young requested in addition that the court state what Congress itself had said in its preamble -- that its concern with organized crime and the criminal element in society should not be to proscribe the activities of bona fide hunters. There was ample evidence in the record that both defendants were bona fide hunters and that they made every attempt to comply with local law in this connection.[5] The case

5. There are no federal requirements for gun possession. See Question and Answer 26 of "Gun Control Act, Questions and Answers [Pub. No. ATF P 7580.1 (5-74)] -- there is no Federal Permit to carry firearms (App. Br., p. 41).

the government cited in opposition is United States v. Jones, 481 F.2d 653 (2 Cir., 1973) (Appee. Br., pp. 34, 35). In Jones, contrary to the case at bar, Jones did not maintain he was a hunter:

> ". . . Jones fails to identify any provision that could be interpreted as excepting him from the general restrictions imposed by the Act." (at 655)

Moreover, Jones meant to or thought he was violating the law at the time he possessed and transported the weapons there involved:

> "It is also worth noting that government witnesses testified that Jones had told them he realized that his purchase or possession of the guns had been illegal." (footnote 4, at 654)

The court below further erred in failing to permit counsel for Ms. Young to argue that she was a law-abiding citizen despite proof before the jury that she was in fact law-abiding. The government presented proof that she paid her bills promptly, applied for permits and filed certificates of good character with appropriate government agencies and that her interest in firearms centered around her interests as a hunter. The government had repeatedly referred to the weapons involved in the alleged crime as "military weapons" (Trial II, 67-69) with the obvious connotation that civilian possession or use would be illegal or evil. This point further expanded in appellant Young's brief, Point V, pp. 44-46 was not deemed of sufficient importance for the government to make comment in its brief.

Moreover, the government failed to respond in any way to appellant Young's argument in Point V that the trial court's conduct toward defense counsel was prejudicial to the defense case and clear error, depriving the defendant of due process of law by reason of the interruptions of her summation for no reason. The court openly criticized her conduct before the jury and additionally threatened her with contempt of court after the jury was pointedly sent out of the room in the middle of defense counsel's summation. See United States v. Dellinger, 472 F.2d 340, 386 (7 Cir., 1972).

POINT VI

THE GOVERNMENT HAS FAILED TO MEET APPELLANT YOUNG'S ARGUMENTS REGARDING THE DISTINCTION BETWEEN DOMICILE AND RESIDENCE AND THE COURT'S DISTORTION OF CONGRESSIONAL MEANING IN ITS INSTRUCTION TO THE JURY WHICH DIRECTED A VERDICT OF GUILT UNDER THE FACTS ADDUCED.

The government has failed to meet appellant Young's argument that it was error for the court below to substitute domicile as the word for residence even though Congress used only the word residence in the criminal statute involved. Under the law a person may have one or more residences although he may have only one domicile. Corwin v. Interpublic Group of Companies, Inc., 512 F.2d 605, 610 (2 Cir. 1975). Judge Mishler thus interpreted the law -- a criminal statute -- more strictly against the defendant than Congress intended. Says the government:

> "Examination of the legislative history shows that Congress simply did not consider the issue. Nowhere is there mention of the term domicile or any discussion of the word residence." (Appee. Br., p. 35)

The government further inconsistently argues that Judge Mishler was correct in substituting the word domicile for residence. The court said:

> "Residence as used in the statute is defined in legal terms as domicile . . . you can have only one residence, as I am defining it, for the purpose of this statute." (A-102)

Yet the government cited, supposedly in support of its argument, C.F.R. regulation §178.11 that described a person "A" as having two residences -- a summer and winter residence (Appee. Br., footnote, p. 36).

The government relies on this Court's approval of a charge in United States v. Jones, 481 F.2d 653 (2 Cir., 1973) where the charge was not objected to by defense counsel. In the present case, however, appellant did object to the charge on the residence issue. That issue and the unmistakable intent of Congress in its only reference to residence (and not domicile), ignored by the trial court, are now before this Court. As discussed in Point V above, moreover, there were other distinctions between the case at bar and the Jones case.

Nor does the government advance any argument that would suggest the endorsement by this Court of an abandonment of the rule of lenity so that an ambiguous statute, if indeed

§922 is ambiguous in its definition of residence, should be interpreted to mandate a conviction of a defendant rather than an acquittal.

CONCLUSION

For all the foregoing reasons and those stated in appellant Young's brief, the judgment of the court below should be reversed.

Respectfully submitted,

ELEANOR JACKSON PIEL

Attorney for Appellant
Elizabeth Jane Young Chin

Dated: New York, New York
February 11, 1977.

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

~~Index No.~~ XXXXXX
Docket No. 76-1420

UNITED STATES OF AMERICA,

Appellee,

against

KENNETH RAYMOND CHIN, and ELIZABETH JANE YOUNG, now known as ELIZABETH JANE YOUNG CHIN,

Defendant

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 101 West 80th Street, New York, N.Y. 10024.

That on February 14, 19 77 deponent served the annexed

REPLY BRIEF FOR APPELLANT ELIZABETH JANE YOUNG CHIN

on David G. Traeger, U.S. Attorney, Eastern District of N.Y.
attorney(s) for Appellee, United States of America
in this action at 225 Cadman Plaza East, Brooklyn, N.Y., Att.: Bernard J. Fried, Esq.
the address designated by said attorney(s) for that purpose by depositing 2 true copies of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this 14th day of February, 1977

August De Fonse

The name signed must be printed beneath

AUGUST DE FONSE

George Cohen

GEORGE COHEN
Notary Public, State of New
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1977